

The opinion in support of the decision being
entered today is not binding precedent of the Board.

Paper 116

Filed by: Trial Section Merits Panel
Box Interference
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

BILLIE B. DADGAR, DONALD E. BALHOFF, CHARLES H. KOLICH,
MENG-SHENG AO and HOMER C. LIN,

Junior Party,
(Application 08/852,462),

v.

JAMES C. GILL and JAMES L. DEVER,

Senior Party
(Patent 5,726,252
Application 09/120,518).

Patent Interference No. 104,249

Before: McKELVEY, Senior Administrative Patent Judge, and
SCHAFFER and MEDLEY, Administrative Patent Judges.

PER CURIAM.

FINAL DECISION

Based on a telephone conference on 11 August 2000, with
counsel of record, advising that the second draft proposed
judgment was acceptable, it is

ORDERED that judgment on priority as to Count 3, the sole count in the interference, is awarded against junior party BILLIE B. DADGAR, DONALD E. BALHOFF, CHARLES H. KOLICH, MENG-SHENG AO and HOMER C. LIN.

FURTHER ORDERED that junior party BILLIE B. DADGAR, DONALD E. BALHOFF, CHARLES H. KOLICH, MENG-SHENG AO and HOMER C. LIN is not entitled to a patent containing claims 19-23 (corresponding to Count 3) of application 08/852,462,

filed 7 May 1997. 35 U.S.C. § 102(g).

FURTHER ORDERED that it is the view of senior party JAMES C. GILL and JAMES L. DEVER, based inter alia on arguments made in Dadgar Preliminary Motions 1-6 and 8-15, that

- (1) claims 18-21 and 24-41 of Gill application 09/120,518, filed 26 February 1998 (Gill application),
- (2) claims 1-8 of Gill U.S. Patent 5,726,252, granted 10 March 1998, based on application 08/796,277, filed 7 February 1997 (Gill patent) and
- (3) claims 1 and 9-16 of Gill reissue application 09/356,734, filed 19 July 1999 (Gill reissue applicaiton) seeking to reissue the Gill patent,

are not patentable and accordingly senior party JAMES C. GILL and JAMES L. DEVER is not entitled to a patent containing

(A) Gill application claims 18-21 and 24-41,

(B) Gill patent claims 1-8 or

(C) Gill reissue application claims 1 and 9-16.

35 U.S.C. § 102(a), (b) and (e); 35 U.S.C. § 103; 35 U.S.C. § 112, first and second paragraphs.

FURTHER ORDERED that Dadgar Preliminary Motions 1-6 and 8-15 are dismissed as moot.

FURTHER ORDERED that nothing in this ORDER shall be construed as precluding Gill, in further ex parte prosecution of the Gill application or the Gill reissue, from obtaining a patent or reissue patent to claims which are patentable.

FURTHER ORDERED that Dadgar Preliminary Motion 7 is dismissed as moot, without prejudice to any further consideration which the parties may deem appropriate before the Commissioner for Patents.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

	FRED E. McKELVEY, Senior)	
	Administrative Patent Judge)	
)	
)	
	_____)	
PATENT	RICHARD E. SCHAFER)	BOARD OF
	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
	_____)	
	SALLY C. MEDLEY)	
	Administrative Patent Judge)	

104,249

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